



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 10, 1998

Mr. Kevin W. Kapitan
Assistant City Attorney
Police Legal Advisor
City of Fort Worth
350 West Belknap
Fort Worth, Texas 76102

OR98-2663

Dear Mr. Kapitan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119450.

The City of Fort Worth received a request for "Calls for Service Logs by the Fort Worth Police Department" relating to an automobile accident of specified date and case number and "copies of the actual 911 tapes of any persons reporting this accident and the name, address, and phone #s of those reporting persons." You seek to withhold the requested information under sections 552.101 and 552.108 of the Government Code. We first address your section 552.108 claim.

Section 552.108(a)(1) excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

You advise that the requested records relate to a pending criminal investigation. We have reviewed the tape you submitted as responsive to the request and conclude that you may withhold it in its entirety under section 552.108(a)(1). However, the information you submitted as responsive to the rest of the request -- for "Calls for Service Logs" and the names, addresses, and phone numbers of those reporting the accident -- requires further consideration.

“Radio logs” have long been treated by this office as “basic information” which must be released absent a particular showing that information contained therein is excepted. *See e.g.* Open Records Decision No. 394 (1983); Government Code §552.108(c) (“basic information” not protected by §552.108). *See generally, Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). With respect to the “Calls for Service Logs” requested here, you note, as “a point of accuracy,” that

the Fort Worth Police Department does not develop or maintain “Calls for Service Logs; instead it develops a ‘Radio Call Master’ (RCM), which lists all information received by a call taker or from a caller, and which is given to the dispatch unit; specifically, time, the caller, the caller’s location, the caller’s phone number, the situation, and the location of the incident. Also, an automated number identification system (ANI) operates to capture the telephone number of the 9-1-1 caller, and prints out a data list of all such information pertaining to 9-1-1 calls. Similarly, an automated location identification system (ALI) capture and prints out data pertaining to the origin location of 9-1-1 calls. The two systems operating together produce the majority of the information captured in the RCM. The RCM, ANI, and ALI data are attached as Exhibits D, E, and F, respectively.

Having reviewed the RCM, ANI, and ALI data you submitted we conclude that all this information taken together constitutes “radio logs” which must be released absent a particular showing that information contained therein is subject to an exception. *Id.* We understand you to raise, with respect to information in the RCM, ANI, and ALI data, the informer’s privilege as well as the confidentiality provisions of section 772.318 of the Health and Safety Code.

Section 552.101 of the Government Code requires withholding of information made confidential by statute. Section 772.318 of the Health and Safety Code makes caller telephone numbers and addresses furnished by computerized 9-1-1 service suppliers or business service users confidential. *See* Open Records Decision No. 649 (1996). To the extent that the 9-1-1 call information at issue here was furnished by a service supplier or business service user under Health and Safety Code chapter 772, subchapter D, of which section 772.318 is a part, we agree that originating telephone numbers and addresses are confidential and must be redacted.¹

¹Open Records Decision No. 649 (1996) notes that of subchapters B, C, D, and E of chapter 772, “Local Administration of Emergency Communications,” subchapters B, C, and D contain identical confidentiality provisions. *See* Health and Safety Code §§ 772.118, 772.218, and 772.318. Subchapter E, however -- “Emergency Communication Service: Counties with Population over 1.5 Million” -- contains no such confidentiality provision.

We note that you express concern that some of the information in the RCM, ANI, and ALI data you submitted – “repeater tower location” and “telephone number link” information – “can be used to gain identity of the callers” on cellular telephones. Open Records Decision No. 649 (1996) ruled that the section 772.318 confidentiality provisions regarding caller telephone numbers and addresses furnished by computerized 9-1-1 service suppliers or business service users are to be narrowly construed. Therefore, we do not believe that information other than caller telephone numbers and addresses, as noted above, may be withheld under section 772.318.

You also claim the informer’s privilege for some of the RCM, ANI, and ALI data you submitted. The informer’s privilege is incorporated under Government Code section 552.101. The privilege has been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer’s privilege:

What is usually referred to as the informer’s privilege is in reality the Government’s privilege to withhold from disclosure the identity of persons who furnish information of *violations of law to officers charged with enforcement of that law*. [Citations omitted.] The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, *by preserving their anonymity*, encourages them to perform that obligation. [Emphasis added.]

The “informer’s privilege” protects the identity of persons who report violations of the law to responsible officials. Here, you have expressed concern “as to the tainting of witnesses and witness testimony which may occur if witness identifying information is prematurely released[.]” Other city police department material you submitted indicates that the witnesses will be shown a “photo line-up” “in order to ascertain if they can identify the driver of the involved hit and run vehicle.” To the extent that there is witness identifying information in the RCM, ANI, and ALI data you submitted as responsive to the request, and to the extent that that information it is not already excepted from disclosure under section 772.318 of the Health and Safety Code, you may withhold such witness identifying information under the informer’s privilege. Except for the RCM, ANI, and ALI information we have found you may withhold under Health and Safety Code section 772.318 or the informer’s privilege, the RCM, ANI, and ALI data must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'William Walker', with a stylized flourish at the end.

William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 119450

Enclosures: Submitted documents

cc: Mr. Darrell P. Joy
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(w/o enclosures)